

REMARKS

Claims 1-64 were pending in the present application. Claims 2-3, 5, 10-11, 17, 19-20, 24, 26-27, and 41-64 are withdrawn following a prior restriction requirement. Thus claims 1, 4, 6-9, 12-16, 18, 21-23, 25, and 28-40 are pending. Applicants respectfully request reconsideration of the pending claims in view of the following remarks.

Double Patenting Rejection

Claims 1, 4, 6-9, 12-16, 18, 21-23, 25, and 28-40 are rejected under the judicially created doctrine of obviousness-type double patenting over the claims of U.S. Patent No. 6,738,808 to Zellner et al. (hereinafter the "'808 patent"). Additionally, the Office Action provisionally rejects claims 1, 4, 6-9, 12-16, 18, 21-23, 25, and 28-40 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending Application Nos. 09/630,134 or 09/739,162 or 09/739,315 or 09/739,339. Applicants respectfully submit that claims 1, 4, 6-9, 12-16, 18, 21-23, 25, and 28-40 of the present application are patentably distinct from the claims of the '808 patent and Application Nos. 09/630,134 or 09/739,162 or 09/739,315 or 09/739,339 and therefore, the double patenting rejection is not proper.

However, the Office Action notes that a timely filed terminal disclaimer in compliance with 37 C.F.R. 1.321(c) may be used to overcome an actual or a provisional rejection based on a nonstatutory double patenting ground provided the conflicting application is shown to be commonly owned with this application. Accordingly, included with this response is a terminal disclaimer which disclaims the terminal part of the statutory term of any patent granted on the present application which would extend beyond the expiration date of the full statutory terms of the '808 patent or any patent granted on one or more of Application Nos. 09/630,134, 09/739,162, 09/739,315, or 09/739,339. Therefore, withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Applicants respectfully submit that this response addresses each and every point of the Office Action and believe that the present application is in condition for allowance. Reconsideration of the application and allowance of the claims is respectfully requested. If the Examiner has any questions or comments concerning this matter, the Examiner is invited to contact the undersigned attorney at the number below.

Respectfully submitted,

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